

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
April 23, 2003

In Reply Refer To:
1800B3-GDG

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In re: KCAA(AM), Big Bear Lake, CA
Facility No. 43995
File No. BP-19961206AD, as
modified by BMP-20000530ABS

Dear Counsel:

This letter concerns the uncontested April 18, 2003, request filed on behalf of Broadcast Management Services, Inc. ("BMS") that the referenced construction permit be treated pursuant to the tolling provisions of 47 C.F.R. § 73.3598(b) or, alternatively, to be granted a waiver to give it an additional 30 days to complete construction. For the reasons detailed below, we deny tolling, but grant a 30-day waiver of the construction period rule to allow BMS to complete construction by May 24, 2003.

The referenced permit was initially granted April 24, 2000, and modified on January 23, 2001. The permit expires April 24, 2003. BMS reports that it spent approximately \$371,000 to date towards modifying KCAA's licensed facilities, that it has made substantial progress, but that its efforts have been hindered by unexpectedly severe rain. BMS's construction contractor states that the towers were erected in March of this year and the ground system completed by the middle of April. According to BMS, all that remains to be done is conducting proof of performance tests and filing a license to cover application.

BMS estimates that it lost 23 construction days this year due to excessive rainstorms. It states that for several days in April, 2003, the path leading to the site was so muddy as to be impassible. The weather described does not rise to the level of an act of God, *i.e.*, natural disaster, and thus does not satisfy the tolling requirements of 47 C.F.R. § 73.3598(b) (1). It is well established, however, that the Commission can waive any of its rules, upon a finding of good cause consistent with the public interest.¹ The Commission recognizes that such a waiver may be appropriate in "rare and exceptional

¹*Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972).

circumstances.”² The Commission has indicated that events completely cutting off access to a site may be among such circumstances.³ BMS documents that it must wait for a 7-day period of dry weather before it can complete the reliable measurements for its proof of performance. We believe that these circumstances warrant waiver of the Commission’s tolling rules, given the substantial construction already completed at significant cost and the short amount of time needed to complete construction.

Accordingly, Broadcast Management Services, Inc.’s request for tolling IS DENIED but its request for waiver of the Commission’s tolling rules, 47 C.F.R. § 73.3598(b), IS GRANTED. We are changing the station’s expiration date to May 24, 2003. The additional 30-day period adequately covers the conditions delaying BMS’s ongoing construction efforts, which we expect will be completed very shortly.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

²*1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules, and Processes*, 13 FCC Rcd 23056 (1998), *recons. granted in part and denied in part*, 14 FCC Rcd 17525, 17541 (1999).

³*Wendell & Associates*, 17 FCC Rcd 18576, 18580 (2002).